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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/111,833	09/02/1997	Seyed A. Angadjivand	49360USA7E	9219

32692 7590 09/23/2003  
3M INNOVATIVE PROPERTIES COMPANY  
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ST. PAUL, MN 55133-3427

20  
EXAMINER

CHIESA, RICHARD L

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/111,833

Applicant(s)

ANGADJIVAND ET AL

Examiner

RICHARD L. CHIESA

Group Art Unit

1724

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 14-20 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 14-20 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☒ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3, 19
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

SN 09/111,833

### **DETAILED ACTION**

(1.) The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1724.

#### ***Drawings***

(2.) The drawings filed on January 17, 1996 have been approved by the USPTO Draftsperson.

#### ***Specification***

(3.) The title and abstract are objected to because they do not reflect the fact that only product claims remain pending in this application. Correction and/or clarification is required.

(4.) The specification is objected to because the first page must still be amended to give the filing dates and status of all the parent cases. Correction and/or clarification is required.

#### ***Claim Rejections – 35 USC 112***

(5.) Claims 16, 18, and 19 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. More specifically, the reasons for this rejection are: (A) Claim 16 is confusing because the word "wearers" (line 4) is indeterminate. Apparently, this word should be changed to --wearer's--. (B) Claims 19 and 20 are ambiguous because they are improper multiple dependent claims. Apparently, the phrase "claims 17-18" in the first line of claims 19 and 20 should be changed to --either claim 17 or claim 18--.

***Claim Rejections – 35 USC 102/103***

(6.) The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless--

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(7.) The following is a quotation of 35 USC 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject

matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(8.) This application currently names joint inventors. In considering patentability of the claims under 35 USC 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicants are advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 USC 103(c) and potential 35 USC 102(f) or (g) prior art under 35 USC 103(a).

(9.) Claims 14-20 are rejected under 35 USC 102(b) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over Reed et al. Reed et al (note col. 2, lines 34-67; col. 3, lines 3-45; col. 4, lines 6-21; col. 5, lines 52-68, and col. 7, line 59 to col. 8, line 21) disclose an electret nonconductive microfiber nonwoven cup-shaped face sealed respirator filter mask as claimed (35 USC 102b). It would appear that Reed et al may not explicitly state that the respirator has inhalation and exhalation valves. However, these valves are apparently the customary conventional parts of any respirator and it would have been readily obvious to one of ordinary skill in the art (35 USC 103a) that valves are employed in the Reed et al respirator apparatus. Furthermore, all of the pending claims are in the form of product-by-process claims and "even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of

production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

(10.) Claims 14-20 are also rejected under 35 USC 103(a) over Reed et al in view of either one of Miyake et al or Tamura et al. Reed et al, as described above in paragraph 8, disclose an electret polymeric microfibrinous web substantially as claimed with the possible exception of water jet impingement and drying in the making of the filter. However, both Miyake et al (note col. 2, lines 3-7; col. 3, lines 3-15; col. 6, lines 11-59; col. 8, lines 31-63; col. 9, lines 25-40, and col. 16, lines 64-67) and Tamura et al (note paragraph bridging pages 2 and 3 and entire page 4 of English language translation) teach the well-known use of water jet impingement and drying in the making of an electret polymeric microfibrinous web for the purpose of increasing life span. Therefore, it would have been obvious to one of ordinary skill in the art to employ water jet impingement and drying in the method making the Reed et al electret polymeric microfibrinous web in order to increase the life span of the web as taught by either one of Miyake et al or Tamura et al.

(11.) Claims 15 and 16 are also rejected under 35 USC 103(a) over the prior art as applied in either one of paragraphs 9 or 10 above, and further in view of UK Patent Application 2,176,404 to Ennan et al. The prior art, as described above in either one of paragraphs 9 or 10, disclose an electret microfibrinous polymeric respirator filter

substantially as claimed with the possible exception of a cup-shaped filter mask having inhalation and exhalation valves. In any case, Ennan et al (note Figures 1, 2, and page 2, lines 14-130) teach the well-known use of a cup-shaped filter mask having inhalation and exhalation valves in a respirator filter for the purpose of ensuring proper air supply. For this same reason, it would have been obvious to one of ordinary skill in the art to employ such an expedient in either one of the prior art electret microfibrous polymeric respirator filters described previously above.

### ***Conclusion***

(12.) The prior art made of record but not relied upon are considered pertinent to applicants' disclosure. These references have been cited as art of interest to show other filter systems.

(13.) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard L. Chiesa whose telephone number is (703) 308-3791.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1700 receptionist whose telephone number is (703) 308-0661.

Facsimile correspondence to Art Unit 1724 must be transmitted through (703) 872-9310. However, any facsimile correspondence in response to a final action must instead be transmitted through (703) 872-9311. These numbers are for Art Unit 1724 correspondence only.

Richard L. Chiesa  
September 16, 2003

*Richard L. Chiesa*

**RICHARD L. CHIESA  
PRIMARY EXAMINER  
ART UNIT 1724**

*Sept. 16, 2003*